

1-2101-9085-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BROOKLYN PARK CITY COUNCIL

In the Matter of the Residency
of Mayor Jesse Ventura

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Wednesday, September 21, 1994, at 10:00 a.m. in Courtroom 755 of the Hennepin County Government Center in the city of Minneapolis, Minnesota.

Theodore J. Collins, Esq., and Bonnie J. Bennett, Esq., of the firm of Collins, Buckley, Sauntry & Haugh, W-1100 First National Bank Building, St. Paul, Minnesota 55101, appeared as independent counsel appointed by the Brooklyn Park City Council. Jesse Ventura, 9004 West River Road, Brooklyn Park, Minnesota 55444, Mayor of the city of Brooklyn Park, appeared representing himself. Mayor Ventura received assistance in the preparation proposed findings and conclusions of law from Alan C. Eidsness, Esq. and David Bradley Olson, Esq., of the firm of Henson & Efron, P.A., 1200 Title Insurance Building, Minneapolis, Minnesota 55401.

The record of this proceeding closed on Thursday, September 29, 1994, upon receipt of the final written submission.

This report is a recommendation, not a final decision. The Brooklyn Park City Council will make the final decision in this matter after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained in this recommended decision. The parties should contact City Attorney Curtis A. Pearson, Esq., of the firm of Wurst, Pearson, Larson, Underwood and Mertz, One Financial Plaza, Suite 1100, 120 South Sixth Street, Minneapolis, Minnesota 55402-1803, to ascertain the date and manner for consideration of this matter by the City Council.

STATEMENT OF THE ISSUE

The issue to be determined in this proceeding is whether Mayor Jesse Ventura is a resident of the city of Brooklyn Park and in compliance with the residency requirements set forth in § 2.06 of the Home Rule Charter and/or Minn. Stat. § 351.02, subd. 4, and/or all other applicable laws or charter provisions.

Based upon all the proceedings herein, the Administrative Law Judge makes following:

FINDINGS OF FACT

1. Jesse Ventura is the elected mayor of the city of Brooklyn Park. given name is James G. Janos, which he uses for a number of purposes.

2. Jesse Ventura and his wife, Theresa, bought the house at 9004 West River Road in the city of Brooklyn Park, Minnesota, in March of 1983 and began residing there at that time. The property has been homesteaded since that time and is presently homesteaded as the result of a filing on January 1, 1993. Neither Mayor Ventura nor his wife has advised the city of Brooklyn Park that they have changed their primary residence. (Ex. 1.)

3. On April 24, 1994, Mayor Ventura and his wife signed a purchase agreement for the purchase of property located at 9950 Brockton Lane North, the city of Maple Grove, Minnesota. He also signed a purchase agreement for adjacent vacant land to be used for the purpose of constructing a ten-stall horse stable and an indoor exercise arena for horses. (Exs. 6, 28.)

4. At the time that the Mayor and his wife signed the purchase agreement, other buyers were interested in the property.

5. The purchase of the Brockton Lane property was closed June 1, 1994. (Exs. 10, 25.) Mayor Ventura and his wife financed the purchase by signing a mortgage with Norwest Mortgage, Inc. On page 3 of the six-page mortgage form the following language appears:

Borrower shall occupy, establish, and use the property as borrower's principal residence within sixty days after the execution of this security instrument and shall continue to occupy the property as borrower's principal residence for at least one year after the date of occupancy, unless lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond borrower's control.

(Ex. 25.)

6. On June 4, 1994, Mayor Ventura signed a contract for the construction of a swimming pool at the Brockton Lane address. (Ex. 4.) A fence and gate were reinstalled in September of 1994. (Ex. 14.)

7. On July 6, 1994, Mayor Ventura and his family moved the majority of their personal belongings from 9004 West River Road in Brooklyn Park to 9950 Brockton Lane North in Maple Grove. (Ex. 16.) Among the items retained in

Brooklyn Park house were a bed, two televisions, a radio, chairs, workout equipment and food. On July 8, 1994, the cable television service was cancelled at 9004 West River Road. (Ex. 21.)

8. On July 8, 1994, Mayor Ventura completed two change of address orders to forward mail sent to James G. Janos or Jesse Ventura. He requested that mail be forwarded from 9004 West River Road to 9950 Brockton Lane North. The form stated that the move was not temporary. (Ex. 2.)

9. On approximately July 5, 1994, Mayor Ventura and his wife listed the property at 9004 West River Road for sale with Sundial Realty. (Ex. 11.) The property was listed with the Multiple Listing Service and was shown by three real estate agents to potential buyers in July and August of 1994. It was not advertised as being vacant. (Ex. 11.) Possession of the property was to be by agreement of the buyer and seller. No purchase agreement has ever been signed for the property and Mayor Ventura's present intention is not to sell the house until 1995.

10. Mayor Ventura's career requires him to make daily long-distance phone calls throughout the country which he made from the Brooklyn Park house prior to July of 1994. He continues to maintain a telephone at the Brooklyn Park house and continued to make long-distance phone calls from 9004 West River Road from July into September of 1994, although the number of telephone calls were greatly reduced. (Ex. 12.) A number of long-distance calls to places where the Mayor has business interests, such as Atlanta, Los Angeles, Dallas and Washington, D.C., were made from the Brockton Lane address in June, July and August of 1994. (Ex. 15.)

11. On August 5, 1994, Mayor Ventura and his wife filed a missing persons report with the Maple Grove Police Department regarding two members of Mayor Ventura's family who were missing for several hours. The Brooklyn Park Police Department was made aware of this incident, but did not handle the missing persons report or the subsequent investigation. The family members later returned to the Maple Grove home. (Ex. 3.)

12. The Mayor's children, Tyrel and Jade, attended the Anoka-Hennepin School District through June of 1994 while residing at 9004 West River Road. In the fall of 1994, both enrolled at and attended the Osseo Area School District for approximately three days, after which they withdrew and returned to the Anoka-Hennepin School District where they attended the first day of classes. (Exs. 13, 24, 35.) Mayor Ventura and his wife attended the school orientation at the Osseo School District.

13. On August 27, 1994, Mayor Ventura signed another postal service change of address order advising the post office that he was temporarily moving from the Brockton Lane address in Maple Grove to 9004 West River Road in Brooklyn Park, Minnesota. (Ex. 29.)

14. Mayor Ventura's driver's license presently lists his address as 9004 West River Road, Brooklyn Park, Minnesota. His wife's driver's license address is 9950 Brockton Lane in Maple Grove, Minnesota. Theresa's address was changed by an application dated July 28, 1994. (Ex. 8.)

15. Mayor Ventura's automobiles and recreational vehicles are registered at the 9004 West River Road address. (Exs. 5, 23.)

16. On the day of the hearing, one of Mayor Ventura's automobiles was at 9004 West River Road and his other vehicles were at the Maple Grove address.

17. Mayor Ventura voted in the city of Brooklyn Park on September 13, 1994, as did his wife. (Ex. 30.) The City's Director of Elections had sent out a nonforwardable card to 9004 West River Road which was returned indicating that Mayor Ventura was "temporarily away" from the Maple Grove address.

address. (Ex. 30.) No challenge was made to Mayor Ventura's voting in Brooklyn Park. A drivers license is usually sufficient proof of residence if voting if a challenge is made.

18. From early July of 1994 to the present, Mayor Ventura's neighbors 9004 West River Road have noticed his vehicles parked there overnight at times. They have also noticed Mayor Ventura jogging in the neighborhood. neighbor's child was swimming with Jesse and Theresa's children and with Theresa at the pool at 9004 West River Road two or three times during this period. Mayor Ventura has also been seen at a neighborhood gas station and sandwich shop.

19. Congressman Jim Ramstad has been able to reach Mayor Ventura at his home in Brooklyn Park on several occasions recently. (Ex. 36.)

20. A housekeeper employed by Mayor Ventura and his wife has been working at the Brockton Lane address, but has also worked at 9004 West River Road since June of 1994.

21. Mayor Ventura has slept at the Brooklyn Park home over ten times since July of 1994. He travels a good deal for business reasons and spends a large amount of time outside of Minnesota. He has eaten meals at the Brooklyn Park address and entertained friends there. Electrical bills continue to be incurred at the address. (Ex. 22.) Mayor Ventura keeps up the property at 9004 West River Road and no one else has ever occupied the property.

22. Mayor Ventura's wife and children have stayed overnight at 9004 West River Road since July of 1994, but not very often and not in July or August of 1994.

23. On one occasion, in late July or early August of 1994, Mayor Ventura was observed driving into the Brockton Lane property at approximately 11:30 p.m. to midnight, with his wife and son.

24. Mayor Ventura has stated during City Council meetings and on his radio talk show that his residence has remained in Brooklyn Park. During one talk show, he stated that he had "moved back" to Brooklyn Park. (Exs. 17-20)

25. The Mayor represented himself at the hearing in this matter, but did not retain counsel and incur legal fees for the preparation of proposed findings and argument subsequent to the hearing.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. That the Brooklyn Park City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to § 2.06 and § 2.09 of the Brooklyn Park City Charter, Minn. Stat. § 351.02, and Minn. Stat. § 14.55.

2. The Notice of Hearing in this matter was proper as to form and was appropriately served.

3. Section 2.07 of the City Charter provides that the Mayor shall be presiding officer of the council and have a vote as a member of the council

4. Section 2.06 of the City Charter provides that a vacancy in the council shall be deemed to exist by reason of "departure from the City, departure of a council member from his/her district, . . ."

5. Minn. Stat. § 351.02 provides, in part as follows:

Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

. . .

(4) The incumbent ceasing to be an inhabitant of the state, or, if the office is local, of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged;

. . .

6. That the burden of proof in this proceeding is upon the independent counsel to establish the facts at issue by a preponderance of the evidence.

7. That a preponderance of the evidence indicates that Mayor Ventura not ceased to be an inhabitant of the city of Brooklyn Park within the meaning of Minn. Stat. § 351.02(4).

8. That a preponderance of the evidence indicates that Mayor Ventura not departed from the city of Brooklyn Park and a vacancy in his office should therefore not be deemed to exist.

9. Any Finding of Fact more properly termed a Conclusion and any Conclusion more properly termed a Finding of Fact is adopted as such.

10. That the above Conclusions are arrived at for the reasons set out in the Memorandum which follows.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED to the City Council of Brooklyn Park, Minnesota:

(1) that a vacancy in the Office of Mayor has not occurred; and

(2) that Mayor Ventura be reimbursed by the city of Brooklyn Park for reasonable legal fees incurred in the course of this proceeding.

Dated this 3rd day of October, 1994.

/s/

GEORGE A. BECK
Administrative Law Judge

NOTICE

The City Council is requested to serve its final decision upon the Administrative Law Judge by first class mail as well as upon the parties.

Reported: Taped, no transcript prepared.

MEMORANDUM

The question which must be decided by the City Council is whether Mayor Ventura has ceased to be an inhabitant of the city of Brooklyn Park within the meaning of the statute or has departed from the City within the meaning of the City Charter. Primary emphasis should be placed on the wording of the state statute since if there should be a conflict between the state statute and the City Charter, the state statute would prevail. A.C.E. Equipment v. Erickson, 152 N.W.2d 739, 741 (Minn. 1967). There is not really a great deal of dispute as to the actual facts of this matter. What is in dispute is what the facts mean, that is, whether they lead to the conclusion that the Mayor is no longer an inhabitant of Brooklyn Park. The independent counsel argues that the Mayor ceased to be an inhabitant of the city of Brooklyn Park on July 6, 1994. He argues that events occurring subsequent to July 6 are irrelevant since the vacancy automatically occurred. However, it is important that all of the facts and circumstances be considered in arriving at a conclusion. The Attorney General Opinions and the case law indicate that cases of this nature are largely fact-dependent, that is, the outcome of each case can only be fairly determined if the totality of the circumstances are considered. Actions like the filing of the second change-of-address order in August or the re-enrollment of the children in the Brooklyn Park School District may very well reveal something about the Mayor's intent in regard to his residence.

The statute does not define what is meant by an inhabitant. A dictionary definition is that an "inhabitant" is a "permanent resident". American Heritage Dictionary (2nd Coll. Ed., 1982.) Generally, if a city council member

has moved from a city and taken up a permanent place of abode elsewhere, he is no longer an "inhabitant" of, nor is he domiciled in, the city. Atty. Gen. 471-M, (August 26, 1955.) Some of the Attorney General Opinions cited by the independent counsel are distinguishable because they involve fact situations where there is no doubt that, or the public official agrees that, he has moved from the jurisdiction in which he was elected. In this case, it is the Mayor's stated intention to maintain a permanent

residence in Brooklyn Park through the end of his term and facts exist to support both sides of the argument as to whether he has departed.

As the independent counsel points out, there are a number of facts which might indicate that the Mayor was no longer a permanent resident. He has purchased another house in Maple Grove and his family and most of his possessions have been moved to that residence. In July he asked to have his mail forwarded to that address. He has made improvements to the new property such as a pool and a fence, which might indicate an intent to reside there on a long-term basis. His children enrolled briefly in the Maple Grove School District. A police call concerning a missing family member was directed to the Maple Grove Police Department. The Brooklyn Park property was listed for sale and the Mayor has made a number of long-distance phone calls related to his career from the house in Maple Grove.

On the other hand, Mayor Ventura has not sold the Brooklyn Park property or entered into a purchase agreement to do so, it remains homesteaded, he has retained sufficient possessions in the house to permit him to live there, and he has stayed overnight there ten times or more since July 6, 1994. His children are now in the Anoka-Hennepin (Brooklyn Park) School District, his driver's license lists the Brooklyn Park address, his automobiles are registered there, and Mayor Ventura voted in Brooklyn Park without a challenge. His neighbors testified that they have seen him in the neighborhood and observed his vehicles parked there overnight.

The Mayor's stated intent as to where his primary residence is cannot be determinative of the issue. The City Council can determine that a vacancy had occurred even over the Mayor's objection. Atty. Gen. Op. 471-M, (February 2, 1967.) However, neither should the Mayor's stated intent be ignored. The only reported court decision in Minnesota in this area places great weight on the intention of the officeholder. In that case, the County Superintendent of Schools of Le Sueur County accepted the duties of Superintendent of Schools of Mountain Lake, Minnesota for a period of one month. During that time, his office was closed in Le Sueur County. He then left Mountain Lake and returned to Le Sueur. The Court determined that he had retained his residence in Le Sueur and that the office was not vacated since his mother continued to keep a house for him in Le Sueur and he had not decided to leave Le Sueur for good. The court noted that, "It is clear to us that the Respondent did not go to Mountain Lake with the intention at the time of abandoning his home in Le Sueur County, and the absence of an intention to abandon a residence is equivalent to an intention to retain the existing one." State v. Hays, 117 N.W. 615, 616 (Minn. 1908).

In the case of voting, the question of residence is largely governed by the intention of the voter, although the act of residing or domicile is also considered. Atty. Gen. Op. 274, (March 27, 1922.) See also, Davidner v. Davidner, 232 N.W.2d 5, 7 (Minn. 1975). Additionally, the election statute

Minn. Stat. § 200.031, indicates that, "The mere intention to acquire a new residence, is not sufficient to acquire a new residence, unless the individual moves to that location; moving to a new location is not sufficient to acquire a new residence unless the individual intends to remain there;" Minn. Stat. § 200.031(i). Accordingly, even if it is the Mayor's intention to move to Maple Grove in 1995, his intent to do so does not mean that he is no longer resident of Brooklyn Park. Neither does the evidence demonstrate that the

Mayor had the intention of abandoning his Brooklyn Park home within the meaning of Hays, supra. It has not been shown that the Mayor intended to abandon his Brooklyn Park residence.

The election law also makes it clear that an individual does not lose his or her residence if the individual leaves home to live temporarily outside the jurisdiction. Minn. Stat. § 200.031(b). This principle is echoed in State of Hays, supra, which construed the predecessor statute to Minn. Stat. § 351.02. Additionally, in a case where an elected County Treasurer in Clearwater County married a resident of the state of North Dakota and then maintained a home there, the Attorney General noted that one can be outside of the jurisdiction for intervals of time, for temporary purposes only, with the intention of returning as soon as those purposes are accomplished, without ceasing to be an inhabitant of the jurisdiction or losing his or her residence. The Attorney General noted that one of the tests in such a case might be whether or not the officer is so situated that he cannot properly perform the duties of his office. Atty. Gen. Op. 151, (August 30, 1937.) In this case it appears that the Mayor did temporarily live more in Maple Grove than in Brooklyn Park during July and August of 1994. He testified that his intention was to help his family become established and to supervise some construction, but that he intended to return to Brooklyn Park to reside and to complete his term as Mayor.

A particularly significant inquiry in this case is to determine the purpose of Minn. Stat. § 351.02(4). That question is answered by the Attorney General in an Opinion which examined a situation in which a City Council member changed his place of residence from one ward to another. The Attorney General stated that, "The purpose of this statute is, of course, to assure effective representation for persons residing in the district. If a council member moves out of the ward shortly after he assumes office, the residence of the ward would be without a resident representative on the council for up to three or four years." Atty. Gen. Op. 63-A-11, (October 24, 1974). There is no assertion in this case that the Mayor is unable to effectively represent the people of the city of Brooklyn Park by virtue of having purchased the property in Maple Grove or that he has not performed his duties. He continues to maintain a presence in the City based upon the factors recited above. He is "situated" to properly perform the duties of his office. Furthermore, declaring the Mayor's office vacant would not appear to advance the statutory goal of assuring effective representation.

The Mayor's intention is to complete the term in office to which he was elected and to maintain a residence in Brooklyn Park in order to do so. It appears that the timing of the purchase of the property in Maple Grove was dictated, in part, by the fact that other purchasers were interested in the property. He also temporarily spent a good deal of time in Maple Grove shortly after his family's move there. This would not, under the authority cited above, disqualify him as a resident of Brooklyn Park. That the Mayor is

planning to live in Maple Grove in the future does not necessarily mean that he has abandoned, or has a present intent to abandon, his domicile in Brooklyn Park. If he chose to reside apart from his family in order to remain as Mayor, he would certainly be entitled to do so. There are many significant factual indications in this record which demonstrate that the Mayor intended to and maintain his primary residence in Brooklyn Park in order to complete his term of office. Facts such as the Mayor leaving furniture at the

house, maintaining a presence in the house as observed by neighbors, occasionally sleeping there, and conducting business and social matters from the house, are sufficient evidence to show that the Mayor is an inhabitant and has not departed the City. Removing a duly elected official from office should be supported by a stronger evidentiary showing than that which exists in the record. Because Mayor Ventura is able to provide effective representation to his constituents, intends to remain a resident through his term, and is, in fact, inhabiting his Brooklyn Park residence, it is recommended that the office of the Mayor should not be declared vacant under Minn. Stat. § 351.02(4) or § 2.06 of the City Charter.

The Mayor seeks to receive the attorney fees he incurred for assistance provided to him in the preparation of the post-hearing submission filed in this case. In a letter to the Administrative Law Judge dated September 15, 1994, the City Attorney stated that he believed it would be appropriate for the Administrative Law Judge to make a recommendation concerning attorney fees. He also stated that it was his opinion that the Mayor was entitled to attorney fees if he prevailed, but not if he is found not to be an inhabitant of the City. The rationale is that if the Mayor has, in fact, departed from the City, then the office is vacant and he then should be responsible for the expense of determining his qualifications to hold office. On the other hand, if he is a resident, he is being challenged in his official position as Mayor, and should properly be awarded legal fees. The case law appears to support this approach. Kroschel v. City of Afton, 512 N.W.2d 351 (Minn. App. 1994). Should the City Council adopt the recommendation contained in this report, it would be consistent to also award reasonable legal fees.

GAB